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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,479	01/22/2002	Andreas Jakob	34351	6519

116 7590 06/08/2005

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EXAMINER

NI, SUHAN

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/054,479		JAKOB, ANDREAS	
	Examiner		Art Unit	
	Suhan Ni		2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission for RCE filed on 03/10/2005 has been entered.
2. This communication is responsive to the applicant's amendment filed on 03/10/2005.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R.1.130 (b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 34-68 of U.S.P. Application, 09/804,848. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-34 of this application are similar in scope to claim 34-68 of the previously mentioned application, 09/804,848 with obvious wording variations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins (U. S. Pat. - 6,084,975) in view of Williams et al. (U. S. Pat. - 6,754,472).

Regarding claim 22, Perkins discloses a binaural hearing device set, comprising: a pair of hearing devices (Fig. 3); and a communication link (66) between said hearing devices, wherein said communication link includes a body electrode (Fig. 3) for providing an electrically connective communication pathway through the body of an user of the set as claimed. But Perkins does not clearly teach of by using the body of an individual wearing said binaural hearing device set as an electrical conductor as claimed. Williams et al. disclose a method and apparatus for transmitting signals using the human body (Fig. 1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide the pathway including a wire and body (Fig. 2) taught by Williams et al. for transmitting signals

and linking of the hearing devices, in order to effectively and efficiently transmitting signals through the human body of the user of the hearing devices.

Regarding claims 23-24 and 27, Perkins further discloses the binaural hearing device set, wherein the link has at least a single wire (66) and a magnet (80, 82) as claimed.

Regarding claims 25 and 28-33, Perkins does not clearly teach for the details of the conductive member of the link as claimed. Since Williams et al. disclose a communication technique for transmitting signals in user's body (Fig. 1), it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable conductive member, such as the communication technique taught by Williams et al. for transmitting signals and linking of the hearing devices, in order to provide a desirable and simpler communications between each of the hearing devices.

Regarding claim 26, Perkins further discloses the binaural hearing device set, wherein the set comprises a magnetic connection arrangement (80) between at least one of the end of said wire and at least one of said two hearing devices.

Regarding claim 34, Perkins further discloses the binaural hearing device set, wherein the hearing devices are hearing aid devices as claimed.

Method claims 1-21 are similar to claims 22-34 except for being couched in method terminology; such methods would be inherent when the structure is shown in the references.

Response to Amendment

5. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

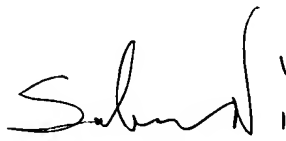
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (571)-272-7505, and the number for fax machine is (703)-872-9306. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (571)-272-7499.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600, or please see <http://www.uspto.gov/web/info/2600>.

June 2, 2005


SUHAN NI
PRIMARY EXAMINER